

Message Text

CONFIDENTIAL

PAGE 01 QUITO 02427 082244 Z

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ACTION ARA-17

INFO OCT-01 ADP-00 COA-02 INT-08 EB-11 COME-00 CG-00

DOT-00 CIAE-00 DODE-00 PM-09 H-02 INR-10 L-03

NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SS-15 USIA-12

RSR-01 /106 W

----- 008848

P R 082202 Z MAY 73

FM AMEMBASSY QUITO

TO SECSTATE WASHDC PRIORITY 7380

INFO AMCONSUL GUAYAQUIL

C O N F I D E N T I A L QUITO 2427

E. O. 11652: GDS

TAGS: PBOR, EFIS, EC

SUBJECT: REVISIONS TO ECUADOREAN FISHING LAW

REF: STATE 85362

SUMMARY: THE EMBASSY DOES NOT BELIEVE THAT AN APPROACH TO THE GOE AS SUGGESTED REFTEL WOULD BE PRODUCTIVE AT THIS TIME . WE BELIEVE NEAR- TERM PROSPECTS FOR NEW GOE FISHERIES LAW HOLD FAR FEWER PROSPECTS FOR AGGRAVATING FISHING DISPUTE THAN REPORTED IN PAST. OUR MAJOR CURRENT CONCERN IS REACTION TO NOTIFICATION UNDER PROVISIONS OF HR 7117, SINCE APPEARS GOE IS UNABLE OR UNWILLING TO MAKE DISTINCTION BETWEEN NOTIFICATION AND AID DEDUCT. CONSEQUENTLY RECOMMEND DEPARTMENT DETERMINE IF IT POSSIBLE TO MAKE NO NOTIFICATION. END SUMMARY.

1. AN APPROACH IN QUITO ALONG LINES SUGGESTED REFTEL DOES NOT APPEAR TO US TO BE PRODUCTIVE. DESPITE OBVIOUS LOGIC OF APPROACH, GOE QUITE LIKELY TO REACT AS IF USG PRESSURING GOE ON MATTER OF DOMESTIC LEGISLATION PROTECTING WHAT GOE SEES AS COUNTRY' S SOVEREIGN RIGHT TO DISPOSE FREELY OF NATURAL RESOURCES. WHETHER REACTION
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WOULD BE MORE FAVORABLE IF SAME MESSAGE WERE FILTERED THROUGH AMBASSADOR QUEVEDO IS OPEN TO QUESTION. HIS TRACK RECORD ON ACCURATELY REPORTING USG POSITIONS TO FONOFF HAS BEEN POOR. SINCE DEVELOPMENTS ON NEW FISHING LAW APPEAR TO BE MOVING IN DIRECTION LESS UNFAVORABLE TO US (FOR LATEST REPORT SEE QUITO DAO IR 6-828-0052-73 OF 071602 Z MAY 73), WE BELIEVE IT PREFERABLE TO LET THIS TREND CONTINUE ON ITS OWN, BARRING INFORMATION IT IS BEING REVERSED.

2. IN PAST FEW WEEKS MANY EMBASSY OFFICERS HAVE RECEIVED CLEAR MESSAGES FROM CIVILIAN AND MILITARY OFFICIALS OF GOE THAT THERE WILL BE MAJOR TROUBLE IF HR 7117 IS IMPLEMENTED. THEY APPARENTLY MAKE NO DISTINCTION BETWEEN NOTIFICATION AND AID DEDUCT AND, GIVEN THEIR PENCHANT FOR NURSING THEIR GRIEVANCES, PERHAPS THEY WOULD PREFER NOT TO.

3. EMBASSY IS NOT INFORMED OF DEPARTMENT'S LEGAL INTERPRETATION OF PRACTICAL OPERATIONAL SIGNIFICANCE OF HR 7117. AMBASSADOR BURNS' LETTER OF APRIL 30 TO ARA- LA/ EP MR. PRINGLE RAISED A NUMBER OF QUESTIONS ABOUT THE DISTINCTION BETWEEN THE NOTIFICATION AND THE CLAIM AGAINST A FOREIGN GOVERNMENT IN THE EVENT OF IMPLEMENTATION OF HR 7117. WHILE IT WOULD APPEAR THAT NOTIFICATION IS MANDATORY, IT IS NOT CLEAR HOW THIS NOTIFICATION BECOMES TRANSFORMED INTO A CLAIM. IF IT DOES NOT BECOME A CLAIM, THEN NO WAIVER WOULD BE REQUIRED. IF IT DOES BECOME A CLAIM AND THE USG IS PREPARED TO WAIVE IT ON FOREIGN POLICY GROUNDS, IT WOULD HARDLY BE CONSISTENT TO MAKE A NOTIFICATION WHICH MIGHT HAVE FOREIGN POLICY CONSEQUENCES ALMOST AS SERIOUS AS FAILING TO GRANT A WAIVER OF THE AID DEDUCT. THEREFORE, OUR FIRST RECOMMENDATION IS THAT THE DEPARTMENT DETERMINE IF IT IS FEASIBLE TO ELIMINATE THE NOTIFICATION PROCESS, PREMISED IF NECESSARY ON THE INTENTION TO GRANT A WAIVER OF THE AID DEDUCT PROVISION.

4. IF NOTIFICATION CANNOT BE AVOIDED, PREFERABLE ALTERNATIVE WOULD BE FOR DEPARTMENT TO NOTIFY ECUADOREAN EMBASSY, PLACING HEAVY EMPHASIS ON MANDATORY REQUIREMENT FOR NOTIFICATION AND STRESSING THAT OPERATIVE PART OF LAW (CLAIM AND CONFIDENTIAL

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AID DEDUCT) HAD NOT BEEN IMPLEMENTED. THIS APPROACH CARRIES THE STRONG IMPLICATION THAT NO CLAIM WILL BE LODGED OR, IF SO, THAT A WAIVER WILL BE GRANTED. IT WOULD BOOMERANG IF NO WAIVER WERE FORTHCOMING. FURTHERMORE IT MAY NOT WORK IF GOE CHOOSES TO TAKE UMBRAGE AT NOTIFICATION ALONE, EQUATING IT WITH SANCTION. OUR BEST CHANCE OF MAKING IT WORK WOULD BE IF WE COULD, SIMULTANEOUSLY

WITH NOTIFICATION IN WASHINGTON, ASSURE GOE HERE THAT NOTIFICATION DOES NOT CONSTITUTE CLAIM; SO NO WAIVER REQUIRED. WE DO NOT TRUST QUEVEDO TO GET THIS MESSAGE THROUGH TO FONOFF WITH SUFFICIENT CLARITY.

5. IF NOTIFICATION IS MANDATORY, AND IT NOT POSSIBLE TO CONVEY INTENTION TO SEEK PRESIDENTIAL WAIVER, OUR WORST CASE SCENARIO IS AS FOLLOWS: GOE WOULD INTERPRET NOTIFICATION AS IMPLEMENTATION OF SANCTION; WOULD REQUEST AID MISSION LEAVE COUNTRY, AND POSSIBLY OTHER MISSION ELEMENTS; ELIMINATE US BIDDERS ON FISHING COMPLEX, MOVE TOWARD MORE RESTRICTIVE NEW FISHERIES LAW; POSSIBLY REQUEST SPECIAL OASGA TO DENOUNCE US FOR ECONOMIC AGGRESSION. EVEN IF GOE REACTION DOES NOT GO TO THESE LENGTHS IT WILL BE NOISY AND UNPALATABLE, AND INITIATIVE WILL REMAIN WITH THEM. WE BELIEVE VALUE OF BUYING SOME PEACE ON FISHING DISPUTE FOR NEXT YEAR IS GREAT ENOUGH TO JUSTIFY SOME IMAGINATIVE INTERPRETATIONS OF HR 7117.
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*** Current Handling Restrictions *** n/a
*** Current Classification *** CONFIDENTIAL
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*** Current Handling Restrictions *** n/a

*** Current Classification *** CONFIDENTIAL

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Review Withdrawn Fields: n/a
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